DATE: May 12, 2020
TO: Board of Supervisors
FROM: Steve Preminger, Director, Strategic & Intergovernmental Affairs
        Christine Flores, Legislative Analyst
SUBJECT: Assembly Bill 3005 (Rivas) Related to the Anderson Dam Seismic Retrofit Project (ADSRP)

RECOMMENDED ACTION
Consider recommendations relating to Assembly Bill 3005 regarding the Leroy Anderson Dam and Reservoir.
Possible action:
   a. Receive report from the Office of Intergovernmental Relations relating to Assembly Bill 3005.
   b. Approve a support position on Assembly Bill 3005.

COMMITTEE RECOMMENDATIONS
The Housing, Land Use, Environment, and Transportation (HLUET) Committee was scheduled to receive a report on this item at its March 19, 2020 meeting. That meeting was cancelled with items on that agenda being advanced to the Board of Supervisors with no recommendation from the HLUET Committee.

FISCAL IMPLICATIONS
There are no fiscal implications associated with receipt of this report.

REASONS FOR RECOMMENDATION
Assembly Bill (AB) 3005 by Assemblymember Robert Rivas is the Expedited Dam Safety for Silicon Valley Act and would facilitate the expeditious and expert construction of the Anderson Dam Seismic Retrofit Project (ADSRP); the bill is sponsored by Valley Water. The project will remove and replace the dam, reconstructed to fit modern seismic and dam safety standards at an anticipated cost of $563 million. The current dam has been determined by local, state, and federal officials to be at risk of an uncontrolled release of water caused by an earthquake, which could inundate cities and rural areas.
AB 3005 would provide Valley Water three key provisions related to the project: 1) authorization of “best value” selection of the construction contractor; 2) expedited judicial review of challenges to environmental documents issued in compliance with the California Environmental Quality Act (CEQA); and 3) require expedited processing of state permits by the Department of Fish and Wildlife and the State Water Resources Control Board, with costs covered by Valley Water. Valley Water has requested the County of Santa Clara to support the bill. In support of Valley Water as well as public and environmental safety, staff recommends support of the measure.

The bill’s objective is to align key state and federal agencies to expedite plan review, response and timelines. AB 3005 has two key focal points: environmental impacts of the project and revising regulations and processes pertaining to the project. With respect to environmental impacts, the bill requires compliance with state laws to complete environmental impact reports; ensures the welfare of fish and wildlife; and waste disposal associated with the project. The other aspect of the bill focuses on expedited judicial review of CEQA challenges, expedited permitting from state environmental agencies and the process of securing “best value” contractors for the project.

Generally, public works and construction contracts are awarded through a competitive bidding process and can utilize “low-bid” and “best value” procurement methods depending on the need and scope of the project. The Santa Clara Valley Water District Act, which created the Santa Clara Valley Water District - now known as Valley Water - specifies utilizing the “low-bid” contract selection method for procurement processes. In the “low-bid” method, a contractor is selected on the basis of cost effectiveness, with less regard to the contractor’s experience and qualifications. AB 3005 will create a process in which Valley Water will be able to award contracts through the “best value” method to qualified contractors. The “best value” method is a process in which a bidder is selected on the basis of the best combination of price and qualification and has been determined to be the best process suited for the project by the independent Board of Consultants pursuant to the Federal Energy Regulatory Commission due to the project’s complex design, delivery, and installation. In comparison to other procurement methods, “best value” evaluates qualifications and cost. This approach will ensure that Valley Water will obtain the most qualified and cost-effective contractors for the project.

California environmental law, CEQA, requires public agencies to prepare an environmental impact report (EIR) for potential projects that may have a significant effect on the environment. These reports inform the public of adverse environmental effects of proposed projects, measures to reduce or avoid those impacts, and provide an analysis of alternatives to the project. CEQA establishes administrative procedures for the review and certification of the EIR as well as judicial review procedures. AB 3005 would establish timelines for the administrative and judicial review of the EIR. Moreover, the bill would apply certain rules of court establishing a 270-day period in which judicial reviews, granting of project approvals, and any appeals must be resolved. Expedited judicial review of CEQA challenges has been authorized for other high-profile projects in the state, such as sports arenas and the state legislative building, to shorten the certification time of the EIR before the construction start date.
Existing law prohibits an entity from altering a body of water and/or deposing of debris in said bodies of water unless the California Department of Fish and Wildlife (CDFW) determines that the activity will not substantially adversely affect existing fish and wildlife resources. Existing law also requires a report to be filed with the appropriate regional water quality control board(s) regarding the waste discharge relative to any change to the character, location, or volume of discharge into the waters of the state. AB 3005 would require CDFW to expedite streambed alteration agreements and require the State Water Resources Control Board to expedite waste discharge permits. The bill would create a process of communication between Valley Water and CDFW detailing specified timeframe requirements and would enable each party to respond in a timely manner. AB 3005 would require the State Water Resources Control Board to review the report and to prescribe requirements for the waste discharge within 120 days.

AB 3005 would also help facilitate expedited state permitting processes. The bill would authorize state agencies to take certain actions to expedite the permitting process without limiting the authority of state agencies in the process. Expedited permitting for the project may result in additional state costs, thus, the bill requires any costs associated with expedited permitting to be covered by Valley Water. This provision will ensure necessary permits are processed in timely manner as the project cannot proceed without obtaining required permits.

**CHILD IMPACT**
The recommended action will have no/neutral impact on children and youth.

**SENIOR IMPACT**
The recommended action will have no/neutral impact on seniors.

**SUSTAINABILITY IMPLICATIONS**
The recommended action will have no/neutral sustainability implications.

**BACKGROUND**
The Anderson Dam Seismic Retrofit Project (ADSRP) commenced in Fiscal Year (FY) 2014 and is expected to be completed in FY 2028. While the project is on target, quality expedited completion of the project will help ensure safety from the risk of a dam failure due to an earthquake.

In February 2020, the Mercury News reported that the Federal Energy Regulatory Commission (FERC) ordered Anderson Reservoir to be completely drained starting October 1, 2020 due to seismic concerns. Valley Water has stated it is actively complying with all federal requirements and the federal order demonstrates the urgency and necessity of the bill. AB 3005 is an urgency statute and will require two-thirds votes to pass. If it is passed, it will take effect immediately. AB 3005 was introduced on February 21, 2020 and has not yet been set for a hearing by a policy committee.

Several county departments including the Office of Emergency Management, Parks and Recreation, and the Consumer and Environmental Protection Agency have reviewed AB 3005 and do not have any concerns with the bill. Department directors congruently agree the need to retrofit the dam and support the processes proposed in the bill. In fact, the department
directors offered that the County should support the bill to ensure environmental and public safety.

**CONSEQUENCES OF NEGATIVE ACTION**

Failure to approve the recommendation action will prevent the County of Santa Clara from expressing a position on AB 3005.

**ATTACHMENTS:**

- Bill Language-AB 3005 (Rivas) As Introduced (PDF)